

AMENDED IN SENATE JUNE 11, 2012

AMENDED IN ASSEMBLY MAY 3, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1745

Introduced by Assembly Member Torres

February 17, 2012

An act to amend Section 2924f of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1745, as amended, Torres. Mortgages: notices of sale.

Existing law requires a lender to file a notice of default in the case of nonjudicial foreclosure prior to enforcing a power of sale as a result of a default on an obligation secured by real property, as specified. Existing law also requires that a notice of sale be given before the power of sale may be exercised. Existing law requires the notice of sale to contain specified information regarding the property and the sale, and to be recorded with the county recorder, as specified. As of April 1, 2012, existing law also requires that the notice of sale contain language notifying potential bidders of specified risks involved in bidding on property at a trustee's sale, and a notice to the property owner informing the owner about how to obtain information regarding any postponement of the sale.

This bill would prohibit a mortgagee, trustee, beneficiary, or authorized agent from recording a notice of sale pursuant to the above provisions after providing written approval of a short sale, as defined. The bill would also authorize a mortgagee, ~~trustee~~, beneficiary, or

authorized agent to withdraw an approval of a short sale if ~~the terms of the short sale agreement have changed~~ *the mortgagor or trustor fails to comply with a condition of the written short sale agreement*. The bill would also require a written notice to be provided to a ~~short sale seller mortgagor or trustor~~ not less than 3 days ~~prior to following~~ the written withdrawal of approval that includes ~~an explanation of the change of condition that caused~~ *the reason or reasons for the withdrawal*. *The bill would also provide that the prohibition against recording a notice of sale would not apply after written withdrawal of a short sale approval is provided to a mortgagor or trustor, unless subsequent approval of a short sale is provided.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924f of the Civil Code, as amended by
2 Section 2 of Chapter 229 of the Statutes of 2011, is amended to
3 read:
4 2924f. (a) As used in this section and Sections 2924g and
5 2924h, “property” means real property or a leasehold estate therein,
6 and “calendar week” means Monday through Saturday, inclusive.
7 (b) (1) Except as provided in subdivision (c), before any sale
8 of property can be made under the power of sale contained in any
9 deed of trust or mortgage, or any resale resulting from a rescission
10 for a failure of consideration pursuant to subdivision (c) of Section
11 2924h, notice of the sale thereof shall be given by posting a written
12 notice of the time of sale and of the street address and the specific
13 place at the street address where the sale will be held, and
14 describing the property to be sold, at least 20 days before the date
15 of sale in one public place in the city where the property is to be
16 sold, if the property is to be sold in a city, or, if not, then in one
17 public place in the judicial district in which the property is to be
18 sold, and publishing a copy once a week for three consecutive
19 calendar weeks, the first publication to be at least 20 days before
20 the date of sale, in a newspaper of general circulation published
21 in the city in which the property or some part thereof is situated,
22 if any part thereof is situated in a city, if not, then in a newspaper
23 of general circulation published in the judicial district in which
24 the property or some part thereof is situated, or in case no

1 newspaper of general circulation is published in the city or judicial
2 district, as the case may be, in a newspaper of general circulation
3 published in the county in which the property or some part thereof
4 is situated, or in case no newspaper of general circulation is
5 published in the city or judicial district or county, as the case may
6 be, in a newspaper of general circulation published in the county
7 in this state that (A) is contiguous to the county in which the
8 property or some part thereof is situated and (B) has, by comparison
9 with all similarly contiguous counties, the highest population based
10 upon total county population as determined by the most recent
11 federal decennial census published by the Bureau of the Census.
12 A copy of the notice of sale shall also be posted in a conspicuous
13 place on the property to be sold at least 20 days before the date of
14 sale, where possible and where not restricted for any reason. If the
15 property is a single-family residence the posting shall be on a door
16 of the residence, but, if not possible or restricted, then the notice
17 shall be posted in a conspicuous place on the property; however,
18 if access is denied because a common entrance to the property is
19 restricted by a guard gate or similar impediment, the property may
20 be posted at that guard gate or similar impediment to any
21 development community. Additionally, the notice of sale shall
22 conform to the minimum requirements of Section 6043 of the
23 Government Code and be recorded with the county recorder of the
24 county in which the property or some part thereof is situated at
25 least 20 days prior to the date of sale. The notice of sale shall
26 contain the name, street address in this state, which may reflect an
27 agent of the trustee, a toll-free telephone number or telephone
28 number in this state of the trustee, the name of the original trustor,
29 and the statement required by paragraph (3) of subdivision (c). In
30 addition to any other description of the property, the notice shall
31 describe the property by giving its street address, if any, or other
32 common designation, if any, and a county assessor's parcel
33 number; but if the property has no street address or other common
34 designation, the notice shall contain a legal description of the
35 property, the name and address of the beneficiary at whose request
36 the sale is to be conducted, and a statement that directions may be
37 obtained pursuant to a written request submitted to the beneficiary
38 within 10 days from the first publication of the notice. Directions
39 shall be deemed reasonably sufficient to locate the property if
40 information as to the location of the property is given by reference

1 to the direction and approximate distance from the nearest
2 crossroads, frontage road, or access road. If a legal description or
3 a county assessor's parcel number and either a street address or
4 another common designation of the property is given, the validity
5 of the notice and the validity of the sale shall not be affected by
6 the fact that the street address, other common designation, name
7 and address of the beneficiary, or the directions obtained therefrom
8 are erroneous or that the street address, other common designation,
9 name and address of the beneficiary, or directions obtained
10 therefrom are omitted. The term "newspaper of general
11 circulation," as used in this section, has the same meaning as
12 defined in Article 1 (commencing with Section 6000) of Chapter
13 1 of Division 7 of Title 1 of the Government Code.

14 The notice of sale shall contain a statement of the total amount
15 of the unpaid balance of the obligation secured by the property to
16 be sold and reasonably estimated costs, expenses, advances at the
17 time of the initial publication of the notice of sale, and, if
18 republished pursuant to a cancellation of a cash equivalent pursuant
19 to subdivision (d) of Section 2924h, a reference of that fact;
20 provided, that the trustee shall incur no liability for any good faith
21 error in stating the proper amount, including any amount provided
22 in good faith by or on behalf of the beneficiary. An inaccurate
23 statement of this amount shall not affect the validity of any sale
24 to a bona fide purchaser for value, nor shall the failure to post the
25 notice of sale on a door as provided by this subdivision affect the
26 validity of any sale to a bona fide purchaser for value.

27 (2) (A) On and after April 1, 2012, if the deed of trust or
28 mortgage containing a power of sale is secured by real property
29 containing from one to four single-family residences, the notice
30 of sale shall contain substantially the following language, in
31 addition to the language required pursuant to paragraph (1):
32

33 ~~"NOTICE~~ *NOTICE TO POTENTIAL BIDDERS*: If you are
34 considering bidding on this property lien, you should understand
35 that there are risks involved in bidding at a trustee auction. You
36 will be bidding on a lien, not on the property itself. Placing the
37 highest bid at a trustee auction does not automatically entitle you
38 to free and clear ownership of the property. You should also be
39 aware that the lien being auctioned off may be a junior lien. If you
40 are the highest bidder at the auction, you are or may be responsible

1 for paying off all liens senior to the lien being auctioned off, before
2 you can receive clear title to the property. You are encouraged to
3 investigate the existence, priority, and size of outstanding liens
4 that may exist on this property by contacting the county recorder's
5 office or a title insurance company, either of which may charge
6 you a fee for this information. If you consult either of these
7 resources, you should be aware that the same lender may hold
8 more than one mortgage or deed of trust on the property.

9
10 NOTICE TO PROPERTY OWNER: The sale date shown on
11 this notice of sale may be postponed one or more times by the
12 mortgagee, beneficiary, trustee, or a court, pursuant to Section
13 2924g of the California Civil Code. The law requires that
14 information about trustee sale postponements be made available
15 to you and to the public, as a courtesy to those not present at the
16 sale. If you wish to learn whether your sale date has been
17 postponed, and, if applicable, the rescheduled time and date for
18 the sale of this property, you may call [telephone number for
19 information regarding the trustee's sale] or visit this Internet Web
20 site [Internet Web site address for information regarding the sale
21 of this property], using the file number assigned to this case [case
22 file number]. Information about postponements that are very short
23 in duration or that occur close in time to the scheduled sale may
24 not immediately be reflected in the telephone information or on
25 the Internet Web site. The best way to verify postponement
26 information is to attend the scheduled-sale." *sale*.

27
28 (B) A mortgagee, beneficiary, trustee, or authorized agent shall
29 make a good faith effort to provide up-to-date information
30 regarding sale dates and postponements to persons who wish this
31 information. This information shall be made available free of
32 charge. It may be made available via an Internet Web site, a
33 telephone recording that is accessible 24 hours a day, seven days
34 a week, or through any other means that allows 24 hours a day,
35 seven days a week, no-cost access to updated information. A
36 disruption of any of these methods of providing sale date and
37 postponement information to allow for reasonable maintenance or
38 due to a service outage shall not be deemed to be a violation of
39 the good faith standard.

1 (C) Except as provided in subparagraph (B), nothing in the
2 wording of the notices required by subparagraph (A) is intended
3 to modify or create any substantive rights or obligations for any
4 person providing, or specified in, either of the required notices.
5 Failure to comply with subparagraph (A) or (B) shall not invalidate
6 any sale that would otherwise be valid under Section 2924f.

7 (D) Information provided pursuant to subparagraph (A) does
8 not constitute the public declaration required by subdivision (d)
9 of Section 2924g.

10 (3) If the sale of the property is to be a unified sale as provided
11 in subparagraph (B) of paragraph (1) of subdivision (a) of Section
12 9604 of the Commercial Code, the notice of sale shall also contain
13 a description of the personal property or fixtures to be sold. In the
14 case where it is contemplated that all of the personal property or
15 fixtures are to be sold, the description in the notice of the personal
16 property or fixtures shall be sufficient if it is the same as the
17 description of the personal property or fixtures contained in the
18 agreement creating the security interest in or encumbrance on the
19 personal property or fixtures or the filed financing statement
20 relating to the personal property or fixtures. In all other cases, the
21 description in the notice shall be sufficient if it would be a
22 sufficient description of the personal property or fixtures under
23 Section 9108 of the Commercial Code. Inclusion of a reference to
24 or a description of personal property or fixtures in a notice of sale
25 hereunder shall not constitute an election by the secured party to
26 conduct a unified sale pursuant to subparagraph (B) of paragraph
27 (1) of subdivision (a) of Section 9604 of the Commercial Code,
28 shall not obligate the secured party to conduct a unified sale
29 pursuant to subparagraph (B) of paragraph (1) of subdivision (a)
30 of Section 9604 of the Commercial Code, and in no way shall
31 render defective or noncomplying either that notice or a sale
32 pursuant to that notice by reason of the fact that the sale includes
33 none or less than all of the personal property or fixtures referred
34 to or described in the notice. This paragraph shall not otherwise
35 affect the obligations or duties of a secured party under the
36 Commercial Code.

37 (c) (1) This subdivision applies only to deeds of trust or
38 mortgages which contain a power of sale and which are secured
39 by real property containing a single-family, owner-occupied
40 residence, where the obligation secured by the deed of trust or

1 mortgage is contained in a contract for goods or services subject
2 to the provisions of the Unruh Act (Chapter 1 (commencing with
3 Section 1801) of Title 2 of Part 4 of Division 3).

4 (2) Except as otherwise expressly set forth in this subdivision,
5 all other provisions of law relating to the exercise of a power of
6 sale shall govern the exercise of a power of sale contained in a
7 deed of trust or mortgage described in paragraph (1).

8 (3) If any default of the obligation secured by a deed of trust or
9 mortgage described in paragraph (1) has not been cured within 30
10 days after the recordation of the notice of default, the trustee or
11 mortgagee shall mail to the trustor or mortgagor, at his or her last
12 known address, a copy of the following statement:

13
14 “~~YOU~~ YOU ARE IN DEFAULT UNDER A

15 _____,
16 (Deed of trust or mortgage)

17 DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
18 YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF
19 YOU NEED AN EXPLANATION OF THE NATURE OF THE
20 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A ~~LAWYER.”~~
21 ~~LAWYER.~~

22
23 (4) All sales of real property pursuant to a power of sale
24 contained in any deed of trust or mortgage described in paragraph
25 (1) shall be held in the county where the residence is located and
26 shall be made to the person making the highest offer. The trustee
27 may receive offers during the 10-day period immediately prior to
28 the date of sale and if any offer is accepted in writing by both the
29 trustor or mortgagor and the beneficiary or mortgagee prior to the
30 time set for sale, the sale shall be postponed to a date certain and
31 prior to which the property may be conveyed by the trustor to the
32 person making the offer according to its terms. The offer is
33 revocable until accepted. The performance of the offer, following
34 acceptance, according to its terms, by a conveyance of the property
35 to the offeror, shall operate to terminate any further proceeding
36 under the notice of sale and it shall be deemed revoked.

37 (5) In addition to the trustee fee pursuant to Section 2924c, the
38 trustee or mortgagee pursuant to a deed of trust or mortgage subject
39 to this subdivision shall be entitled to charge an additional fee of
40 fifty dollars (\$50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

(d) A mortgagee, trustee, beneficiary, or authorized agent may not record a notice of sale pursuant to this section after providing written approval of a short sale *to a mortgagor or trustor*.

(1) For purposes of this subdivision, “short sale” means a transfer of *real property* in which the trustor or mortgagor sells *a the real property* for a price less than the remaining amount of the indebtedness secured by the property at the time of sale.

(2) Approval of a short sale may be withdrawn by the mortgagee, ~~trustee~~, beneficiary, or authorized agent at any time ~~if the terms of the short sale agreement have changed~~. ~~Not less than three days prior to the withdrawal of approval, written notice shall be provided to the short sale seller and shall~~ *after the mortgagor or trustor fails to comply with a condition of the written short sale agreement. Withdrawal of approval shall be made in writing to the mortgagor or trustor, shall include an explanation of the change of condition that caused reason or reasons for the withdrawal, and shall state the date on which the withdrawal of approval is effective, which date shall be no less than three days following the date on which the written withdrawal of approval is provided to the mortgagor or trustor.*

(3) *The prohibition in this subdivision against recording a notice of sale shall not apply after written withdrawal of a short sale approval is provided to a mortgagor or trustor, as provided in paragraph (2), unless subsequent approval of a short sale is provided.*

~~(e) This section shall become operative on January 1, 2013.~~